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Ex-F.B.I. Man Indicted by U.S. In Mail Opening

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WASHINGTON, April 7—A Federal grand jury in New York today indicted John J. Kearney, a former supervisor in the Federal Bureau of Investigation, on charges that agents working under his direction had illegally opened mail and tapped telephones in their search for Weather Underground fugitives.

A spokesman for the bureau said that he believed Mr. Kearney was the first agent ever to be indicted on a felony charge.

The five-count indictment charged him with two counts of conspiracy, two counts of obstruction of correspondence and one count of unlawful wiretapping.

All the alleged offenses were carried out by Squad 47 of the internal security division of the bureau's New York field office between "late 1970" and June 1972.

It was this squad, which was made up of about 60 agents, that was assigned the job of tracking down members of the Weather Underground who had been charged with bombings and other terrorist activities and who had gone into hiding.

Most of the alleged mail openings and wiretappings took place in Manhattan and were committed against persons the bureau believed were in contact with some of those fugitives and might be able to provide leads to their whereabouts.

Officially, a Justice Department spokesman, John Wilson, would say only that the investigation "is continuing." Privately, however, a number of F.B.I. and Justice Department sources said that more indictments were expected and that today's action meant that Attorney General Griffin B. Bell had accepted a recommendation by attorneys in his civil rights division that the department seek indictments against at least six present and former officials.

This recommendation, which was sent to Mr. Bell two weeks ago, was that the department begin a sequence of prosecutions that would start with relatively low-level officials and move upward into the F.B.I. hierarchy.

The civil rights division's investigation, which has been in progress for almost a year, has focused on a series of illegal break-ins that were allegedly committed by members of Squad 47 in 1972 and 1973 as part of their search for the radical fugitives.

'Handwriting on Wall'

Two former top bureau officials, Edward S. Miller, who was head of the intelligence division, and W. Mark Felt, who was No. 2 man in the bureau, have said publicly that they authorized several of the break-ins, and the investigation is known to have focused on them and on others in the bureau's chain of command.

"The handwriting is on the wall," an attorney for one of the targets of the investigation said today. "They can't indict Kearney and not go after the higher-ups as well."

In a statement that he released today, Mr. Bell said, "My own dealings with the F.B.I. in the short time that I have been Attorney General sustain my overall respect for the F.B.I. and my sincere trust in the high standards of professional responsibility demonstrated by the men and women who have the honor of serving as F.B.I. agents."

At the J. Edgar Hoover F.B.I. Building across Pennsylvania Avenue from Mr. Bell's office the mood was described by one long-time agent as "very grim."

"This is one of the worst days we've had," he said.

Most of the agents in Squad 47 were granted immunity in return for their testimony and are not expected to be prose-

cuted. An attorney for nearly 50 of these agents, Jack B. Solerwitz, of Mineola, L.I., said today that "all of my men think the world of [Mr. Kearney]" and that he considered the indictment "a sad and tragic day for Federal law enforcement."

Mr. Solerwitz, who represented the Federal Criminal Investigators Association, also said that the indictment could lead to a breakdown of the Federal law enforcement structure because "agents won't know whether to carry out orders or not."

Mr. Kearney, 55 years old, retired in June 1972 after 25 years with the bureau. A former colleague described him today as "a real solid, gutsy guy" who was respected within the New York field office.

Break-ins Not Mentioned

The indictment makes no mention of illegal break-ins, most of which, according to Justice Department sources, took place after Mr. Kearney retired in June 1972. But it outlines in considerable detail a series of mail openings that allegedly took place so frequently they became known as the "mail run" and tapping of home phones of persons believed to be in contact with the fugitives and also of public pay telephones near their apartments.

According to the indictment, the agents used keys to remove mail from apartment mail boxes, took it back to the field office at 201 East 69th Street where it was steamed open and copied and then returned it.

The indictment also charged Mr. Kearney with a conspiracy "to unlawfully intercept wire communications" and said that the agents of Squad 47 did this "under defendant Kearney's supervision, guidance and control." The allegedly illegal investigative techniques were used by the agents in their search for clues to the whereabouts of some of the better-known Weather Underground fugitives of the period, such as Mark Rudd, Bernardine Dohrn, Kathie Boudin and Cathy Wilkerson.

The investigation of these activities was conducted by a group of civil rights division lawyers headed by J. Stanley Pottinger, the former head of the division, and William L. Gardner, the head of the division's criminal section.

If convicted, Mr. Kearney could be sentenced to as much as five years in prison and a \$10,000 fine on each of the conspiracy and wiretap charges, and five years in prison and a \$2,000 fine on the mail-opening charges.